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7-22-2005

## EEOC v. Lambka & Renfroe L.L.C. d/b/a Perko's Cafe and Dynaco, Inc.

Judge Frank C. Damrell

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## EEOC v. Lambka & Renfroe L.L.C. d/b/a Perko's Cafe and Dynaco, Inc.

### Keywords

EEOC, Lambka & Renfroe LLC, Perko's Cafe, Dynaco Inc., CIV-S-04-1751 FCD GGH, Consent Decree, disparate treatment, termination, Hispanic, national origin, Employment Law, Title VII

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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11

12 EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

13 Plaintiff, )

14 v. )

15 LAMBKA & RENFROE L.L.C., d/b/a/ )  
16 PERKO'S CAFÉ and DYNACO, INC., )

17 Defendants. )  
18

Civil Action No. CIV-S-04-1751 FCD GGH

CONSENT DECREE

19  
20 I. INTRODUCTION

21 1. Plaintiff, EEOC, filed this action alleging that defendants, Lambka & Renfroe  
22 L.L.C. d/b/a Perko's Café and Dynaco, Inc., subjected Charging Party Raymie and other Hispanic  
23 and/or Mexican employees to unlawful harassment based on their national origin and ultimately  
24 caused the unlawful discharge of a class of Hispanic/Mexican employees. Defendants deny  
25 Plaintiff's allegations and claims in this action.

26 2. Defendant Dynaco, Inc., has been dismissed from the action by the EEOC.  
27

28 Consent Decree  
Civil Action No. CIV-S-04-1751 FCD GGH

1           3.       The EEOC and Defendant Lambka & Renfro L.L.C. d/b/a Perko's Café  
2 (hereinafter "Defendant") want to conclude fully and finally all claims arising out of the above  
3 action without the expenditure of further resources and expenses in contested litigation.

4                               **II. NON-ADMISSION OF LIABILITY**

5           4.       This Consent Decree is not an adjudication or finding on the merits of this case  
6 and shall not be construed as an admission of any violation or liability by Defendant.

7                               **III. DEFINITION OF TERMS**

8           5.       "Claimants" refers to Raymie Lopez Rajewski, the individual who filed the charge  
9 of discrimination leading to the instant action, and other similarly situated individuals who the  
10 EEOC determines shall participate in monetary relief pursuant to this Consent Decree.

11          6.       For the purposes of this decree, the term "Harassment" refers to any alleged  
12 harassment based on the protected status of race, gender, religion, national origin, color, age or  
13 disability.

14                               **IV. GENERAL PROVISIONS**

15          7.       This Consent Decree is intended to and does effectuate the full, final, and  
16 complete resolution of all allegations and claims of unlawful employment practices and  
17 discrimination arising from or relating to (a) the original discrimination charge of discrimination,  
18 EEOC Charge Number 370-A2-0958 and (b) the Complaint filed in this action, EEOC v.  
19 LAMBKA & RENFROE L.L.C., d/b/a/ PERKO'S CAFÉ and DYNACO, INC., Civil CIV-S-04-  
20 1751 FCD GGH, pursuant to Title VII of the Civil Rights Act of 1964.

21          8.       This Court has jurisdiction over the subject matter and the parties to this action.

22          9.       This Consent Decree constitutes a full, final, and complete resolution of Plaintiff's  
23 Complaint and the underlying charge of discrimination filed with the EEOC.

24          10.       This Consent Decree shall become effective upon its entry by the Court.

25          11.       Each party shall bear its own costs and attorney fees.

26          12.       The Court has reviewed the terms of this Consent Decree in light of the pleadings,

1 the record herein, and the applicable law, and now approves the Consent Decree in its entirety.

2 **V. MONETARY SETTLEMENT**

3 13. Defendant agrees to pay the gross sum of \$35,000.00 (hereinafter "Settlement  
4 Sum") through quarterly payments outlined below. The EEOC will inform Defendant how the  
5 Settlement Sum shall be apportioned between the Claimants.

6 14. Payment to the Claimants shall be made in equal quarterly payments totaling the  
7 Settlement Sum of \$35,000.00, commencing on or about July 31, 2005 or as soon thereafter as  
8 practicable, and continuing for a period of three (3) years thereafter. No interest shall accrue or  
9 be incurred by Defendant. The monetary relief shall be issued in checks drafted in each of the  
10 Claimant's names and amounts as outlined in Exhibit A. The checks shall be delivered to the  
11 EEOC for distribution. The checks shall be payable to the order of the Claimants in the form of  
12 business checks, cashier's checks, or certified checks. Defendant also will issue an IRS Form  
13 1099 for each of the checks issued pursuant to this paragraph.

14 A. Defendant will mail the copies of the IRS Form 1099 to Evangelina Fierro  
15 Hernandez, Senior Trial Attorney for the EEOC, at 350 The Embarcadero, San  
16 Francisco, CA 94105, simultaneously with the mailing of the checks.

17 B. Payment of monetary relief to the Claimants shall be contingent on the  
18 execution of a release of all claims against Defendant by each of the Claimants.  
19 No portion of this Settlement Sum is attributable to or representative of any type  
20 punitive damages claim.

21 **VI. GENERAL INJUNCTIVE RELIEF**

22 15. ***Retaliation:*** Consistent with Section 704 of Title VII, 42 U.S.C. §2000e-3,  
23 Defendant, its officers, agents, managers (including supervisory employees), successors or  
24 assigns and all those in active concert or participation with them, agree not to engage in,  
25 implement or permit any action, policy or practice with purpose of retaliating against any of the  
26 Claimants or any person who was identified as a possible claimant or witness in this action

1 because they opposed any alleged practice; or testified or participated in any manner in any  
2 investigation, proceeding or hearing in connection with this case.

3 **VII. SPECIFIC INJUNCTIVE RELIEF**

4 16. Defendant affirms its continuing commitment to the objectives contained in the  
5 following "Statement of Zero-Tolerance Policy and Equality Objectives":

6 Defendant is firmly committed to maintaining a zero-tolerance  
7 policy concerning discriminatory harassment and retaliation against  
8 individuals who report harassment in the company's workplace; to  
9 swiftly and firmly responding to any acts of harassment and  
10 retaliation of which the company becomes aware; to implementing  
a disciplinary system that is designed to strongly deter future acts  
of harassment or retaliation; and to actively monitoring its  
workplace in order to ensure tolerance, respect and dignity for all  
people.

11 This paragraph does not create any contractual or common law causes of action or other rights  
12 that would not otherwise exist under statute.

13 17. Defendant agrees to develop and implement the following policies, procedures  
14 and practices at the Perko's Café currently operated by Defendant:

15 ***EEO and Harassment Policies***

16 A. To the extent necessary Defendant shall revise its EEO & harassment  
17 policies (in English and Spanish) within thirty (30) days of signing the Consent  
18 Decree, such that the policies: (i) include definitions of discriminatory  
19 harassment, with specific reference to harassment based on race; (ii) include  
20 examples to supplement the definitions of harassment based on race; (iii) provide  
21 for substantial discipline and/or corrective action for incidents of discriminatory  
22 harassment; (iv) include non-retaliation language with examples to supplement  
23 the definition of retaliation; (v) provide for substantial discipline for incidents of  
24 retaliation; (vi) provide that complaints of harassment and/or retaliation will be  
25 received irrespective of whether they are made verbally or in writing; (vii) explain  
26 that Defendant will conduct a prompt and thorough investigation after a



1 complaint is made or received and will take remedial action if necessary upon  
2 conclusion of an investigation; and (viii) indicate that, promptly upon the  
3 conclusion of the investigation of a complaint, Defendant will communicate to the  
4 complaining party the results of the investigation and the remedial actions taken  
5 or proposed, if any.

6 B. Defendant shall effectively disseminate its revised policies and procedures  
7 by:

8 (i) Distributing copies to all current employees of Defendant within  
9 10 days of their adoption;

10 (ii) Giving a copy of the revised policies and procedures to and  
11 reviewing them with all new employees of Defendant upon the employees'  
12 hire.

13 C. Defendant will submit a copy of the revised EEO and harassment policies  
14 to EEOC at the same time it submits its report on the completion of training as  
15 described below in Section IX.

16 D. Defendant will submit a copy of the complaint procedures to the EEOC at  
17 the same time it submits its certification of completion of training as required by  
18 Section IX.

19 ***Supervisor Accountability.***

20 E. Defendant agrees that it shall impose substantial discipline – up to and  
21 including termination, suspension without pay, or demotion – upon any supervisor  
22 or manager who the company determines has engaged in harassment or has  
23 knowingly permitted any such conduct to occur in his or her work area or among  
24 employees under his or her supervision, or who Defendant determines has  
25 retaliated against any person who complains or participates in any investigation or  
26 proceeding concerning any such harassment.

1 F. Defendant shall advise managers and supervisors of their duty to actively  
2 monitor their work areas to ensure employee compliance with the harassment  
3 policy, and to report any incidents and/or complaints of harassment and/or  
4 retaliation of which they become aware.

5 ***Harassment Training***

6 G. Within six months of entry of this Decree, Defendant will present to all of  
7 its employees, including owners, managers and supervisors, at least one (1)  
8 hour of mandatory anti-harassment training.

9 (i) The training shall be developed and presented by an outside source,  
10 i.e., someone who is not employed by Defendant, who is knowledgeable  
11 about Title VII and discriminatory harassment and who has the  
12 background, skill and ability to educate Defendant's employees about the  
13 issue of discriminatory harassment in the workplace. The training will  
14 include examples of the types of remarks and behavior that will not be  
15 tolerated in Defendant's business locations. The training will further  
16 inform each participant that he or she is responsible for knowing and  
17 complying with the contents of Defendant's EEO and harassment policies  
18 and procedures.

19 (ii) Supervisors and/or managers who will assume responsibility for  
20 enforcing Defendant's EEO and harassment policies upon expiration of  
21 the Consent Decree shall also receive training on appropriate techniques  
22 for documenting and investigating complaints of harassment. The training  
23 on investigative techniques can be included as a component of the  
24 mandatory discriminatory harassment training.

25 (iii) The owners or principals of Defendant will also receiving training  
26 on appropriate techniques for documenting and investigating complaints of



1 harassment.

2 H. The cost of the training described in paragraph G above shall be borne by  
3 Defendant.

4 I. Defendant will retain records of the training programs, copies of any  
5 materials distributed during the training and lists documenting the dates on which  
6 it held the training and identifying the persons who attended. Defendant will  
7 provide a copy of these records and training materials to the EEOC within thirty  
8 (30) days of completion of the trainings.

9 **VIII. REPORTING**

10 18. Six months after entry of the Consent Decree and again every six months  
11 thereafter, Defendant will submit reports to the EEOC summarizing any complaints of  
12 harassment received by Defendant during the preceding six-month period. The reports will  
13 include the identities of the complainant(s) and the alleged harasser(s), a summary of action  
14 taken in response to the complaint, and the resolution of any such complaint. Defendant will  
15 attach copies of the corresponding written records.

16 19. Within thirty (30) days of the entry of this Consent Decree, Defendant will send  
17 the EEOC appropriate verification of its completion of harassment training for its employees.

18 20. Defendant shall submit a final report to the EEOC thirty (30) days before the  
19 Consent Decree expires containing a statement verifying its compliance with the terms of the  
20 Consent Decree.

21 **IX. RETENTION OF JURISDICTION AND EXPIRATION OF**  
22 **CONSENT DECREE**

23 21. This Consent Decree shall terminate three (3) years from the date of entry by the  
24 court, unless EEOC petitions this court for an extension of the Decree because of alleged  
25 noncompliance by Defendant. If EEOC determines that Defendant has not complied with the  
26 Consent Decree, EEOC will provide written notification of the alleged breach to Defendant and

1 will not petition the court for enforcement sooner than thirty (30) days after providing such  
2 written notification. The thirty-day period following written notice shall be used by the parties  
3 for good faith efforts to resolve the issue. If EEOC petitions the court and the court finds  
4 Defendant to be in substantial violation of the terms of the Decree, the court may extend this  
5 Consent Decree and provide appropriate remedies and orders.

6 22. This Court shall retain jurisdiction over this action for the purposes of enforcing  
7 the provisions of this Consent Decree. This Consent Decree shall expire by its own terms at the  
8 end of three (3) years without further action by the parties.

9 Respectfully submitted,

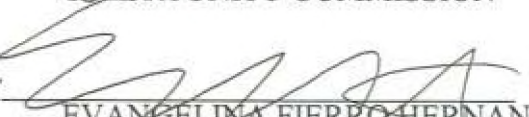
10 DATED: 7/22, 2005

By   
WILLIAM TAMAYO  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

14 DATED: 7/22, 2005

By   
JONATHAN PECK  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

17 DATED: 7/22, 2005

By   
EVANGELINA FIERRO HERNANDEZ  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

21 DATED: \_\_\_\_\_, 2005

By \_\_\_\_\_  
ROBERT J. SCHNACK  
BULLIVANT HOUSER BAILEY PC  
11335 Gold Express Drive, Suite 105  
Gold River, CA 95670-6310

24 APPROVED AND SO ORDERED:

25  
26 \_\_\_\_\_  
U.S. District Judge

27 Consent Decree  
28 Civil Action No. CIV-S-04-1751 FCD GGH

1 Consent Decree, EEOC will provide written notification of the alleged breach to Defendant and  
2 will not petition the court for enforcement sooner than thirty (30) days after providing such  
3 written notification. The thirty-day period following written notice shall be used by the parties  
4 for good faith efforts to resolve the issue. If EEOC petitions the court and the court finds  
5 Defendant to be in substantial violation of the terms of the Decree, the court may extend this  
6 Consent Decree and provide appropriate remedies and orders.

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8 the provisions of this Consent Decree. This Consent Decree shall expire by its own terms at the  
9 end of three (3) years without further action by the parties.

10 Respectfully submitted,

11  
12 DATED: \_\_\_\_\_, 2005

By \_\_\_\_\_  
WILLIAM TAMAYO  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

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14  
15 DATED: \_\_\_\_\_, 2005

By \_\_\_\_\_  
JONATHAN PECK  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

16  
17  
18 DATED: \_\_\_\_\_, 2005

By \_\_\_\_\_  
EVANGELINA FIERRO HERNANDEZ  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

19  
20  
21 DATED: 7/22, 2005

By Robert J. Schnack  
ROBERT J. SCHNACK  
BULLIVANT HOUSER BAILEY PC  
11335 Gold Express Drive, Suite 105  
Gold River, CA 95670-6310

22  
23  
24 APPROVED AND SO ORDERED on July \_\_\_\_, 2005:

25  
26 \_\_\_\_\_  
U.S. District Judge

27  
28 Consent Decree  
Civil Action No. CIV-5-04-1751 PCD CGH